IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.

S. B. CIVIL MISC. APPEAL NO. 1861/2000

M/S. HOTEL CHANDRA MAHAL
v
THE REGIONAL DIRECTOR, E.S.I. CORPORATION

DATE OF JUDGMENT: 15th MARCH, 2007.

Hon'ble Mr. Justice R. S. Chauhan

Mr. G.P. Sharma for the appellant.
Mr. A.S. Khangarot for the respondent.

By Court:

REPORTABLE

This appeal challenges the order dated 31.7.2000 passed by the Employees State Insurance Court, Jaipur, whereby the learned Judge has dismissed the application filed by the appellant under Section 75 of the Employees State Insurance Act, 1958 (henceforth to be referred to as 'the Act', for short).

In a nutshell, the facts of the case are that M/s. Hotel Chandra Mahal is a small hotel establishment, which provides only lodging but no boarding for the travelers. According to the appellant, there is no restaurant in the said hotel. The families of the business partners also reside in the same building where the hotel is situated. Since its inception, at no point of time, has it ever employed ten or more employees for wages in connection with business activities of

the hotel. Moreover, no manufacturing process is being carried out with the aid of power for the activities pertaining to the hotel. According to the appellant on 30.5.91 and 6.6.91 Mr. Yadram Gupta, the Inspector from Employees State Insurance Corporation (henceforth to be referred to as 'the Corporation' for short) conducted a survey of the appellant's establishment to see whether the provisions of the Act are applicable to the establishment or not. Allegedly, during the course of survey he was convinced that the establishment did not employ ten or more employees nor it was engaged in manufacturing process with the aid of power. Furthermore, according to the appellant on the dates of the inspection, no inspection report was drawn by Mr. Yadram Gupta. However, he did handover a 01-Form to the appellant to be filled up and also instructed him how to fill up the said form. During the inspection allegedly, the said Inspector also asked the partner of the concern Mr. Gopal Lal to sign certain papers. Thereafter, the appellant did not hear anything from the Corporation. However, to his shock and dismay, he received an order dated 22.10.91 from the Corporation informing him that on the basis of the Inspection Report dated 30.5.91 and 6.6.91, the appellant-establishment has been covered under the provisions of the Act with effect from 30.5.91. The appellant immediately filed a representation on 17.7.92, wherein it contended that it is not covered under the said Act. For, it neither

employs ten or more employees for wages nor carries out any manufacturing process with the aid of power. It further contended that although a domestic fridge of 165 ltrs. was being used at the premises, but the said fridge is used for domestic purpose and not for the purpose of the hotel. It was also contended that no article for sale in the hotel is kept in the said fridge. However, the Corporation did not pay any heed to the representation. In fact on 4.9.91, it issued a show cause notice wherein it assessed the dues on an ad hoc basis from May, 1991 to March, 1992. Therefore, having left with no other alternative, the appellant filed an application under Section 75 of the Act challenging the coverage of the appellant and also notice dated 4.9.91.

The Corporation filed their reply wherein they contended that on the dates of the inspection, the Inspector, had discovered that eleven employees were working in the hotel. Moreover, the fridge was being used for the purpose of storing the cold-drinks and other eatable items. The Inspector had also discovered that a pump was being used for carrying water to the overhead tanks on the roof of the building. Lastly, it was contended that an inspection report was prepared on the spot which was signed by Mr. Gopal Lal, the partner of the appellant concern.

On the basis of the pleadings, the learned Court framed

three issues. In order to support its case the appellant examined the partner Gopal Lal as a witness and submitted some documents. On the other hand, the Corporation examined Mr. Yadram Gupta as a witness and submitted few documents. After going through the oral and documentary evidence, vide order dated 31.7.2000, the learned Court dismissed the application. Hence this appeal before this Court.

Mr. G.P. Sharma, the learned counsel for the appellant, has vehemently argued that the present case raises a substantial questions of law; namely, as to the interpretation of the provisions of law, as contained in Section 2(12) of the Act read with Section 2 (k) of the Factories Act, 1938. He has further contended that the inspector has wrongly included partners as employees on wages. The partners could not be included in the said category. Therefore, the inspector has erroneously concluded that eleven persons were working in the establishment. Moreover, the fridge was being used for the domestic purpose and not for the purpose of hotel. By keeping soft-drinks and eatables in the fridge, no manufacturing process was being undertaken with the aid of power. Lastly, that the use of the pump to carry the water to the rooftop does not come within the definition of manufacturing process as given under Section 2(14)(AA) of the Act, nor is it included in the definition of manufacturing process in 2(k) of the Factories Act. In order to

buttress his case, he has relied upon, Regional Director, ESI Corporation Vs. Ramanuja (1985 Lab & Ind. Cases, 544 (S.C.)), Garage Kamat Vs. Regional Director, ESI Corporation (1998 LLR 979), New Tajmahal Cafe Ltd. Vs. Inspetor of Factories (1956 (1) LLJ 273).

On the other hand, Dr. A.S. Khangarot, the learned counsel for the Corporation has argued that no substantial questions of law are involved in the present case, therefore, the appeal is not maintainable under Section 82 of the Act. Secondly, the Inspector did not included partner as paid employees of the establishment. In fact, on the dates of inspections eleven employees were discovered whose names were given by the Inspector in the report. Moreover, contradictory statements were given by the partner Gopal Lal in his testimony before the court, with regard to usage of the fridge and its placement. Thirdly, that a manufacturing process was being carried out in the establishment with the aid of power. Therefore, the learned Court had correctly concluded that the appellant-establishment is covered by the Act. Lastly, that the Act is a social beneficial piece of legislation which should be interpreted liberally so as to give benefit to as many workmen as possible.

We have heard learned counsels for the parties and have perused the impugned order.

At the dawn of independence, in order to protect and promote the welfare of workmen, who were employed in factories and in allied areas, the Parliament in its wisdom enacted the Employees State Insurance Act, 1948. The preamble of the Act clearly states that the Act is outcome of a policy to provide remedies for the widespread events arising from the consequences of national poverty. It is a piece of social security. The Act were originally made applicable to the factories. The Act envisages also the extension of benefits to the employees in other establishments, industrial, commercial, agricultural or otherwise, by a notification issued by the appropriate Government. The benefits conferred by the Act cover a large number of employees than what the Factories Act and allied legislations intended. The object of the Employees State Insurance Act is "to secure sickness, maternity, disability and medical benefits to employees of factories and establishments working in them or elsewhere and benefits to their dependants".

Section 2 (12) of the Act defines the word "factory" as under:-

> **"(a) whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or**
>
> **(b) whereon twenty or more persons are employed or were employed for wages on any day of the preceding**

twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on.

but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed:".

Thus according to the definition any premises where ten or more workmen employed for wages and in any part of which a manufacturing process is being carried with the aid of power, or is ordinarily so carried on, then the premises falls within the definition of word "factory". (we are not concerned in the present case with sub-clause (b) of clause (12) of Section 2 of the Act). Section 2(14) (AA) defines the words "manufacturing process" as being assigned the same meaning as in the Factories Act. According to Section 2(k) of the Factories Act, "manufacturing process" would mean any process for--

"(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance; or

(iii) generating, transforming or transmitting power, or

(iv) composing types for printing, printing by letter-press, lithography, photo-gravure or other similar process or book-binding;] [or]

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels, [or]

[(vi) preserving or storing any article in cold-storage;]"

The beneficial object of the Act are reflected in Section 49 dealing with sickness benefit, Section 50 dealing with maternity benefit, Section 51 dealing with disablement benefit, Section 52 dealing with dependants benefit, Section 56 dealing with medical benefits. Thus undoubtedly, the Act is a social beneficial piece of legislation. In the case of Transport Corporation of India Vs. Employees State Insurance Corporation & Anr. (2000 (1) SCC 332) the Apex Court held :

"Employees State Insurance Act, 1948 is a beneficial piece of legislation intended to provide benefits to employees in case of sickness, maternity, employment injury and for certain other matters in relation thereto. It is enacted with a view to ensuring social welfare and for providing safe insurance cover to employees who were likely to suffer from various physical illnesses, during the course of their employment. Such a beneficial piece of legislation has to be construed in its correct perspective so as to fructify the legislative intention underlying its enactment. When two views are possible on its applicability to a given set of employees, that view which furthers the legislative intention should be preferred to the one which would frustrate it."

A bare perusal of the impugned order clearly reveals that the learned Court has meticulously analysed the evidence on record. It has noticed the facts that on the basis of inspection, a inspection report was, indeed, prepared, which was signed by Gopal Lal. According to the inspection report eleven employees, whose names have been given in the report itself, does not include the name of the

three partners. Therefore, the first contention of the learned counsel that the partners were included as employees of the concern was rejected by the learned court. The learned court had also rejected the contention that no inspection report was prepared. Thus, it was clearly proved that more than ten employees were working at the hotel when the inspection was made. Therefore, the first part of the definition of factory was clearly established.

Moreover, the learned court has discussed in detail, the placement and the usage of the fridge. The fridge was being used for the purpose of storing cold-drinks and eatables. The fridge was placed in the kitchen belonging to the hotel. Furthermore, a 1/2 horse power pump was being used to carry the water to the roof top tanks. The said water was being used by the travelers, who were staying at the hotel. Looking to the definition of the "manufacturing process" as given in Section 2(k) of the Factories Act, the establishment was engaged in making, ornamenting, oiling, cleaning, breaking up any article or substances with a view to its sell delivery or disposal. Moreover, the pump of 1/2 horse power was being used for pumping water. Thus activities carried out in the premises were engaged in the process of manufacturing as defined by Section 2(k) of the Factories Act. In the case of Col. Sardar C.S. Angre Vs. The State & Anr. (AIR 1965 Raj. 65), this Court has clearly held that "no definite or precise test can be prescribed for

determining the question whether a particular process is a manufacturing process. Each case must be judged on its own facts regard being had to the nature of the processes employed, the eventual result achieved and the prevailing business and commercial notions of the people." Although the appellant claims that no restaurant existed at the hotel. But the existence of the eatables kept in the fridge clearly prove that food was being processed and manufactured by the hotel for the benefit of the travelers. Hence the learned Court has correctly and validly interpreted the provisions of Section 2(12) of the Act and 2(k) of the Factories Act and has validly given a liberal interpretation to the said provision.

In the result, there is no force in this appeal. It is, hereby, dismissed.

(R.S. CHAUHAN) J.

MRG.